

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JONG JEON
11326 Westbrook Mill Lane
Fairfax VA 22030

Plaintiff

v. Civil Action No.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
245 Murray Lane SW
Washington DC 20528

Defendant

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This is a Freedom of Information Act [FOIA] case. Plaintiff submitted a FOIA request on February 27, 2019, but defendant did not make a “determination” whether to comply with the request within 20 business days, as required by 5 U.S.C. § 552(a)(6)(A)(i). Nor did defendant do so within 30 business days.

Jurisdiction and Venue

2. This court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a) (4) (B), and 28 U.S.C. § 1331. This court has jurisdiction to grant declaratory and further necessary or proper relief pursuant to 28 U.S.C. §§2201-2202 and Federal Rules of Civil Procedure 57 and 65.

3. Venue in this district is proper under 5 U.S.C. § 552(a) (4) (B) and 28 U.S.C. § 1391(c) because defendant is in the District of Columbia.

The parties

4. Plaintiff, a resident of Fairfax, VA, submitted a FOIA request on February 27, 2019.

5. Defendant DHS is a department of the executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is responsible for enforcing federal immigration laws. DHS has possession and control over the documents sought by plaintiff.

FIRST CAUSE OF ACTION

6. Plaintiff repeats, alleges and incorporates the allegations of the above paragraphs as if fully set forth herein.

7. Plaintiff made a FOIA request on February 27, 2019. *See Exhibit 1*, attached hereto.

8. Defendant received the request on February 27, 2019.

9. Defendant sent a letter dated March 15, 2019 to plaintiff. *See Exhibit 2*, attached hereto, which says NRC 2019-032-790.

10. Defendant did not determine within 20 days whether to comply with plaintiff's request and did not immediately notify plaintiff of such determination. Nor did defendant do so in 30 days.

11. Defendant still has not yet made the required determination.

12. In *Judicial Watch v. Dep't of Homeland Security*, 895 F.3d 770, 780 (D.C. Cir. 2018), the Court noted that records are to be made "promptly available." The Court further noted that when agencies complained about "the high volume of requests and lack of resources, Congress allowed agencies only ten additional days to respond where there were

‘unusual circumstances’... [and] even rejected a 30-day extension provision...” *Id.* at 781. (citations and quotations omitted). “Congress contemplated that agencies would improve their record management systems to ensure requested records are made ‘promptly available.’” *Id.* at 781. “There is no doubt that Congress intended FOIA’s time limits to be mandatory. *Id.* at 785. (Judge Pillard, concurring.). FOIA “requires each agency to swiftly disclose all nonexempt information...agencies...lack incentives to get that done. That is precisely why Congress enacted FOIA’s time frames...” *Id.* at 789.

13. “It is emphatically not permissible under FOIA for a court simply to assume that an agency’s circumstances are ‘exceptional.’ There is no ground...for relieving the [agency] of its burden of justification and simply presuming the [agency] is systemically entitled to ... ‘additional time...’” *Id.* at 789.

14. “Consequently, courts have repeatedly found that an agency’s failure to respond to a FOIA request within the statutory time limits violates FOIA and allows the aggrieved party to sue. “ *Brown v. U.S. Customs & Border Protection*, 132 F. Supp. 3d 1170, 1173 (N.D. Cal. 2015).

15. The above acts and omissions of DHS violate 5 U.S.C. § 552(a)(6)(A) and (B).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Because of defendant’s inaction, plaintiff has constructively exhausted his administrative remedies.

17. Defendant did not make a “determination” within the relevant statutory time period, [therefore] the requester may file suit without exhausting administrative appeal remedies.” *CREW V. FEC*, 711 F.3d 180, 185 (D.C. Cir 2013).

18. WHEREFORE, plaintiff requests that judgment be entered in his favor against defendant and that the court:

- a) Order defendant to make a determination forthwith;
- b) Order defendant to furnish the requested documents;
- c) Award plaintiff reasonable attorney fees and costs under 5 U.S. C. §552(a) (4) (E) and
- d) Grant all other such relief as the Court deems proper and equitable.

Respectfully submitted,

Attorney for Plaintiff

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